IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13284 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DISTRICT PANCHAYAT

Versus

GOHEL BHARAT SINH VARSANGBHAI

Appearance:

MS MAMTA VYAS for Petitioner

MRS DT SHAH for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/08/97

ORAL JUDGMENT

#. The District Panchayat, Surendranagar, filed this Specail Civil Application before this Court and challenge has been made to the Award of the Labour Court, Surendranagar, dated 14.6.94, passed in Ref.(L.C.S.) No.1204 of 1989 (Old No.699 of 1989), under which the respondents-workmen, eleven in all, were ordered to be reinstated back in service along with 50% backwages.

#. As per the case of petitioner, the respondent-workmen were engaged purely on adhoc basis for scarcity relief work. Vide order dated 2.12.87, their services were discontinued as the relief work had come to an end. The respondent-workmen filed civil suit and obtained exparte interim relief which was later on vacated. Against the order of Civil Court vacating interim relief, the respondents-workmen preferred appeal before the District Court, which came to be dismissed on 18.10.88. Thereafter the respondents-workmen have taken up the matter by raising industrial dispute, before the Conciliation Officer and on report of the Conciliation Officer, the State Government has referred the dispute for adjudication to the Labour Court. Before the Labour Court, the petitioners have raised a defence that the respondents-workmen were appointed purely on adhoc basis for scarcity relief work. Their services were discontinued on 2.12.87 as the relief work in connection with which they have been appointed was over. So it cannot be said to be a case of retrenchment. While terminating their services on completion of work for which they have been appointed, it was not necessary to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the `Act 1947'). The Labour Court has not accepted this contention of the petitioner herein on the ground that they have not produced any evidence to prove that these workmen were appointed only for scarcity relief work. Taking it to be a case of services of respondents-workmen for more than one year and termination of their services in violation of Section 25F of the Act 1947, the impugned Award has been made. Hence this Specail Civil Application before this Court.

#. The respondents have not filed reply to the Specail Civil application.

#. The learned counsel for petitioner, Ms.Mamta Vyas contended that while passing the Award impugned, the Labour Court has not considered the provisions of Section 2(oo)(bb) of the Act 1947. It was the case of employment of respondents-workmen for scarcity relief work and as such it cannot be said to be a case of retrenchment. It has next been contended that this Court has taken the view, in the case of Mehsana District Panchayat, in Specail Civil Application No.341 of 1988 and 2472 of 1988, decided on 8.8.88, that on completion of scarcity relief work, in case termination of services of workmen engaged in that scarcity relief work is to be made, then compliance of provisions of Section 25F of the Act 1947

is not to be made and the same is not to be treated as retrenchment. It is urged that the petitioner has not been given sufficient opportunity of producing the evidence in support of its case. The advocate who was engaged by petitioner was not allowed to participate in the proceedings by respondents and as such the petitioner has been deprived of its right of defence in the matter as the said advocate has returned the brief to the petitioner. However, adjournment has been granted to cross-examine the respondents herein on their affidavit, but during that period another advocate could not be engaged. Lastly, Ms.Vyas, learned counsel for petitioner contended that otherwise also, the finding of the Labour Court that there is no compliance of provisions of Section 25F of the Act 1947, is wholly perverse. The workmen-respondents have not produced any evidence to show that they have worked for one year. The evidence which has been produced by the respondents before Assistant Labour Commissioner in Conciliation proceedings has been relied which should not have been done.

#. On the other hand, the learned counsel for respondents-workmen, Mrs.D.T.Shah contended that it is a case where burden lies on the petitioner to prove that the respondents-workmen were engaged in scarcity work and that burden has not been discharged. Sufficient opportunity has been given by the labour Court to the petitioner, but still they have not produced any evidence and as such, the impugned Award has rightly been passed. It has next been contended that the petitioner had admitted that the respondents-workmen have worked for one year and in view of this admission, the Labour Court has not committed any error in arriving at a conclusion that their services were terminated in violation of provisions of Section 25F of the Act 1947. In support of her contention, the learned counsel for the respondents placed reliance on the following decisions of this Court:

1. Special Civil Application No.1933 of 1991
   decided on 30th September 1992.

2. Specail Civil Application No.4709 of 1987
   decided on 30th June 1989.

3. 1995(II) LLJ 1240 -- Petlad Bulakhidas
   Mill Compay Limited and Ramabhai
   Bhikhabhai

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Before the Labour Court, the petitioner had raised a plea that all these respondents-workmen have been appointed on adhoc basis in connection with scarcity work and on completion of that work, their services were brought to an end. That plea has been taken by petitioner in the written statement, written arguments as well as during the course of arguments in the matter. So a plea has been specifically raised but the petitioner could not produce any evidence. The Labour Court has further recorded a finding that the petitioner has not produced any document or evidence to show that the workmen have not completed service of 240 days. The Labour Court has taken it to be a case where the burden lies on the petitioner to prove that respondents have worked for less than 240 days. When the respondents-workmen have made a grievance that their services have been terminated without following the provisions of Section 25F or 25G or 25H of the Act 1947, the burden initially was on them to prove that they have worked for one year and their services have been terminated without giving one month's notice or notice pay in lieu thereof as well as retrenchment compensation. However, in this case there is no dispute that the provisions of Section 25F of the Act 1947 have not been complied with but before the Award could have been made, the respondents-workmen should have established, to seek protection under the provisions of Section 25F of the Act 1947, that they have worked for one year etc. I find sufficient merits in the contention of learned counsel for the petitioner that before the Labour Court, no evidence has been produced by respondents-workmen to establish that they have worked for one year or 240 days in a year and the Labour Court has recorded finding on the basis of the complaint filed by them before the Assistant Labour Commissioner, a Conciliation Officer. A translated copy of the Award has been filed by learned counsel for respondents. At page No.13 of the translated copy, the Labour Court has held as under:

> ....Due to this fact looking to the complaint of applicants before Assistant Labour Commissioner and the fact stated in written statement of opponent that workmen were kept, together applicants had served for more than one year which is proved. On the other side it has not been proved that they were kept for scarcity relief work.....

This finding has been given only on the basis of material which has been produced by respondents-workmen before the Assistant Labour Commissioner, a Conciliation Officer.

That evidence produced could not have been relied upon in these proceedings. The learned counsel for respondents has not disputed that that material was not produced by workmen in the reference before the Labour Court. Further, the learned counsel for respondents contended that it is admitted case of petitioner that the respondents-workmen have worked for one year. The learned counsel for respondents-workmen tried to contend that it is admitted case of petitioner from the aforesaid finding of the Labour Court, but I do not find any such admission in the findings. Moreover, the learned counsel for respondents is unable to point out anything from the Award of the Labour Court where it has held that the petitioner has admitted that the respondents-workmen have worked for one year. The learned counsel for the respondents wanted to urge something admitted by the petitioner which is not there in the order of the Labour Court. Otherwise also, the Labour Court, as stated earlier, has proceeded with assumption as if burden to prove that respondents-workmen have not worked for 240 days lies on petitioner. There cannot be any negative evidence.

#. Taking into consideration the totality of the facts of the case, I find sufficient merits in the contention of the learned counsel for the petitioner that there is an error apparent on the face of the Award of the Labour Court. The Award is passed on the material which was not part of the proceedings before the Labour Court. The contention of the learned counsel for the petitioner that the petitioner has not been afforded sufficient opportunity of defence in the matter also deserves acceptance. Shri S.B.Gogia, advocate, was appointed by petitioner in the matter to defend it, but objection was taken against that advocate by representative of respondents-workmen, and as such, he had returned file back to the petitioner. It is true that adjournment was granted for engaging another advocate, but when the advocate who has been engaged has returned brief for the reason that he has been objected to plead the case of petitioner, then it is a case where the petitioner was not afforded sufficient opportunity to defend in the proceedings. The petitioner has submitted written arguments wherein it has been stated that an objection was taken against their advocate who has returned back the file of case and when this objection was taken in written arguments, the Labour Court should have considered the same and should have granted opportunity to the petitioner either to engage another advocate or to produce evidence on its own. It is true that Vakalatnama of Shri S.B.Gogia was not on record, but nevertheless the

fact stated by the petitioner that the advocate engaged by them has returned brief as his appearance was objected, is not disputed. Taking into consideration these facts, I am of the opinion that the petitioner has not got opportunity of producing its defence. Looking to the nature of the case where plea has been taken by petitioner of appointment of respondents-workmen in the scarcity relief work, I consider it to be appropriate that one more opportunity otherwise also be granted to the petitioner to prove this fact. In case it is really appointment of respondents-workmen in scarcity project, then certainly on the ground that the petitioner could not produce evidence they will get reinstatement which will unnecessarily put heavy burden on the petitioner. The petitioner cannot be allowed to bear burden of these workmen in case they have been appointed only for scarcity relief work. Though the learned counsel for respondents-workmen, with all vehemence, contended that the petitioner has been given sufficient opportunity in the matter but it has not availed of that opportunity, but looking to the nature of the case and the fact that one advocate has been instructed by the petitioner and as he was objected by other side, he had returned the brief, I consider it to be in the fitness of things and in the interest of justice to grant one more opportunity to the petitioner to produce evidence. However, looking to the fact that the services of the respondents-workmen have been terminated in the year 1988, I consider it to be appropriate to give a time bound programme. This course is in the interest of respondents-workmen also. They too have not produced any evidence on record to establish that they have worked for one year and whatever evidence which has been relied by the Labour Court is part of the evidence produced before the Conciliation Officer. So the respondents-workmen are also at liberty to produce evidence on this vital issue.

#. In the result, this writ petition succeeds and the same is allowed. The Award of the Labour Court, Surendranagar, dated 14.6.94 made in Ref.(LCS) No.1204 of 1989 (Old No.677 of 1989) is quashed and set aside and the matter is remanded back to the Labour Court, Surendranagar, with directions to decide the matter afresh after giving opportunity to produce evidence to both sides. It is further directed that the respondents-workmen shall complete evidence within a period of two months from the date which is first fixed for recording evidence by the Labour Court. Thereafter the petitioner herein shall complete its evidence within a period of three months next. However, the Labour Court shall take care to decide the matter within a period of

six months from the date of receipt of certified copy of this order by it. It is expected that the respondents or their representative will not object in case the petitioner desires to defend itself through its advocate.

##. The petitioner is directed to pay Rs.2,200/- by way of costs of this Specail Civil Application to the respondents-workmen. The respondents-workmen shall get Rs.200/- each from this amount. Rule made absolute in aforesaid terms with no order as to costs.

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(sbl)